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Putting the cart before the horse

Australian governments have a mandate whereby they align with international regulations, in particular European regulations, where ever practical. This is part of an overarching global harmonisation strategy that is aimed at reducing Australian specific laws and rules, enabling trade to be accomplished between our country and international markets. This is a two-way street, allowing products from Australia to be exported more efficiently and allowing us to import goods that have been developed to international regulations, rather than to Australian specific rules. The end result is more choice for Australian consumers. In the new vehicle space, this international harmonisation is achieved by a piece of regulation known as the United Nations Economic Commission for Europe Agreement for World Harmonisation of Vehicle Regulations - 1958, known within government and industry circles simply as “the ‘58 Agreement”, of which Australia is a signatory. Under our ‘58 Agreement obligations, Australia adopts European safety and environmental vehicle regulations where appropriate and typically within two, to four years, after implementation in Europe.

The National Transport Commission (NTC) recently released a Regulatory Impact Statement (RIS) for In-service Safety for Automated Vehicles. The RIS explores the safety risk of Automated Vehicle (AV) deployment in Australia and makes a number of recommendations for possible AV regulation in Australia. The NTC’s Automated Vehicle RIS is not the type of robust financial analysis of a specific option, or options, that we are accustomed to see from government, but rather a flimsy review that does not consider pending global technical regulation for AV’s. Amongst a number of shortcomings of the RIS, the most glaring oversight is the document’s lack of consideration of Australia’s obligations to international vehicle harmonisation. The NTC are proposing unique and specific Australian rules and laws for Automated Vehicles, regulations that do not currently exist in any other country in the world. If Australia was to “go it alone” and introduce the regulations proposed by the NTC’s RIS, global manufacturers of Automated Vehicles would have to seriously consider the legal ramifications and risks of selling AV’s in Australia, with their likely conclusion being not to offer vehicles with this technology, due to the significant litigation risks associated with the proposed unique Australian laws. This would slow, or halt, Automated Vehicle deployment, including trials, in Australia. The RIS also makes the recommendation that a new Australian law should be developed that would make an employee of the vehicle manufacturer, or distributor, in Australia, personally liable for the AV when it is in automated driving mode. That person would be legally responsible for an automated driving system that he/she had no control over and was likely developed and tested overseas by an

organisation that has no legal and possibly no financial, standing in Australia. What individual would put themselves at that level of risk and what vehicle company would put one of their employees in that precarious position? None, the vehicle manufacturer, or distributor, would simply not offer such vehicles or technology in Australia, thus depriving all Australians of the potential safety, mobility and productivity/economic benefits that could be gained from being an earlier adopter of advanced driver assist systems, automated vehicles and automated vehicle technology.

The RIS and its recommendations are a classic example of “putting the cart before the horse”, or in our industry’s case, “the trailer before the truck”. The NTC should be reviewing the global development of regulations for effective automated vehicle cyber security, in-vehicle recording systems that will capture predetermined AV data, to determine who, or what, was controlling the vehicle in the event of an “incident” and data access protocols. These international regulations will be the real enabler of automated vehicles globally and in Australia and must first be in place overseas, then adopted by Australia.

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